IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4973 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

LEGAL HEIR OF VALIM AHMED GULAM MAHMED MEMON

Appearance:

1. Special Civil Application No. 4973 of 2005

MR HARDIK C RAWAL for Petitioner No. 1

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 04/05/2005

ORAL JUDGEMENT

1. The present petition has been preferred against the award passed by Industrial Tribunal, Ahmedabad in Reference (IT) No.412/1999 dated 26th August,2003.

2. Learned counsel appearing for the petitioner mainly submitted that the respondent workman was working with Merejkhan E.Khambhata Motor Services from 17th May,1952 to 30th September,1955. Subsequently, his services were taken over by petitioner corporation as there was nationalization of private bus operators. The date of retirement of such type of older employees was 60 years and for remaining employees, it was 58 years. It is submitted by the learned counsel appearing for the petitioner that after completion of 58 years of service, a certificate of Civil Surgeon was necessary, showing that the workman is physically and mentally fit. The respondent workman had given that certificate for one year only, after completion of 58 years of his service. Thus, the respondent workman continued in services upto 59 years. For 60th year, again Certificate of Civil Surgeon for physical as well as mental fitness was necessary, which was not produced by the respondent workman. He was therefore not allowed to continue in services for his 60th year. Therefore, salary, dearness allowance, house rent allowance were also not paid for that year. That there is no question of reinstatement whatsoever arises, but so far as salary for the period running from 1/12/92 to 30/11/93 is concerned, there was no fitness certificate produced by the respondent workman, and therefore, the second year extension was not given to the respondent workmen. This aspect of the matter was not considered by the Industrial Tribunal, Labour Court, Ahmedabad, and, therefore, order passed by Industrial Tribunal, Ahmedabad is deserves to the quashed and set aside.

3. Looking to the facts and circumstances of the case, I am fully agreed with the reasons given and conclusion arrived at in award delivered by the Industrial Tribunal, Ahmedabad in Reference (IT) No.412/1999 dated 26th August,2003. The award passed by the Industrial Tribunal, Ahmedabad, is true, correct and inconsonance with the facts. There is not substance in the present petition, especially for the following facts and reasons :

(i) The respondent workman was working with Merejkhan E. Khambhata Motor Services from 17th May,1952 to 30th September,1955, before nationalization of the bus services. The present petitioner had absorbed respondent workman on service, the age of superannuation for such type of workman was in stead of 58 years, it was 60 years. Extension of 2 years service was a conditional one. The

condition was that the workman has to produce the medical certificate issued by Civil Surgeon for the mental as well as physical fitness. The respondent workman presented the said certificate for 59th year, therefore, his services were extended for one year after 58 years. So far as second year is concerned, there is no extension of service by the petitioner for the reason that the respondent workman has not produced the Certificate of Civil Surgeon for physical as well as mental fitness. Here the petitioner has made factual error. The medical Certificate was produced by the respondent workman dated 23rd October,1992. This aspect of the matter has been rightly appreciated in the award passed by the Industrial Tribunal, Ahmedabad.

(ii) If, we look closely, the contention of the present petitioner that the medical certificate for physical as well as mental fitness has not been produced by the respondent workman, then, this is a misinterpretation of the evidence by the petitioner. Though the medical certificate dated 23rd October,1992 was presented by the respondent workman, but the petitioner had brushed side the said certificate for the reason that it was only for physical as well as visual fitness and not for mental fitness. Infact, the workman had worked for 40 long years with the petitioner corporation. Never, ever before mental fitness of the respondent workman has been objected till the last year of his service. Physical as well as visual fitness certificate was presented by the respondent workman. Physical and visual fitness coupled with the fact that the respondent workman was working continuously upto 59 years of his age includes mental fitness. Looking to the facts and circumstances of the case, there is no need for separate mental fitness certificate. Such separate Certificate ought not to have been demanded by the petitioner, just for sake of demanding, especially when the respondent workman was working with the petitioner continuously for approximately for four decades and when there was no complaint for his mental fitness upto 59 years. Even for the last year of his service career, physical fitness and visual fitness Certificate was given. The said Certificate was sufficient to satisfy the need of extension of

2nd year of his service.

4. Keeping in mind the peculiar facts and circumstances of the present case and evidence placed on record, the award passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No.412/99 dated 26th August,2003 is absolutely true, correct and in consonance with the facts and law. There is no substance in the present petition. This court is not sitting in appeal against the said award. There is no reason to interfere with the award passed by the Industrial Tribunal, Ahmedabad. There is no substance in the present petition and, hence, the same is dismissed.

(D. N. PATEL,J)

(dipti)